

DEPARTMENT OF STATE REVENUE

04-20170751R.MOD

Memorandum of Decision: 04-20170751R
Sales and Use Tax
For Tax Years 2012, 2013, & 2014

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision or Final Order Denying Refund.

HOLDING

Indiana Hotel Franchisee was entitled to refund of interest on previously granted refund claim because the Department denied this amount in error.

ISSUE

I. Tax Administration - Refund of Interest.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-9-2; Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Sq. Amoco. Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer protests the partial denial of a claim for refund of interest related to erroneous tax assessment.

STATEMENT OF FACTS

Taxpayer is a hotel franchisee doing business in Indiana. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's business for tax years 2012, 2013, and 2014 and assessed additional sales and use tax, including sales tax on service charges in connection with banquet and catering activities. Taxpayer paid the assessment in full, including associated interest assessed pursuant to IC § 6-8.1-10-1. On September 16, 2016, Taxpayer timely filed a GA-110L Request for Refund form requesting a refund of sales tax assessed on the service charges, which included the interest assessed by the Department as a result of the audit. The Department granted Taxpayer's request for refund in part and refunded the base sales tax assessed on the service charges, but denied refund of the associated interest. Taxpayer protests the partial denial of its refund claim, stating that it is entitled to a refund of the interest paid on the erroneous assessment.

An administrative phone hearing during which Taxpayer's representative explained the basis the instant protest, and this Memorandum of Decision results. Further facts will be provided as necessary.

I. Tax Administration - Refund of Interest.

DISCUSSION

Taxpayer protests the Department's denial of a portion of its claim for refund of interest assessed during the audit of Taxpayer's business for the 2012, 2013, and 2014 tax years. It must be noted that all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Sq. Amoco. Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong and that it is entitled to the requested refund.

The Department's refund denial letter stated, "Your refund claim requests interest in the amount of \$8,885.00. Interest is calculated based on the postmark date of the refund claim. Since your refund claim was processed prior to the 90 day interest date, no interest is due." The reasoning in the denial letter relies upon IC § 6-8.1-9-2(d), which states:

- (d) An excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was

paid, whichever is latest, accrues interest from:

- (1) the date the refund claim is filed, if the refund claim is filed before July 1, 2015; or
- (2) for a refund claim filed after June 30, 2015, the latest of:
 - (A) the date the tax payment was due;
 - (B) the date the tax was paid; or
 - (C) July 1, 2015;

at the rate established under IC § 6-8.1-10-1 until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made. As used in this subsection, "refund claim" includes a return and an amended return that indicates an overpayment of tax. For purposes of this subsection only, the due date for the payment of the state gross retail or use tax, the oil inspection fee, and the petroleum severance tax is December 31 of the calendar year that contains the taxable period for which the payment is remitted. Notwithstanding any other provision, no interest is due for any time before the filing of a tax return for the period and tax type for which a taxpayer files a refund claim.

Thus, IC § 6-8.1-9-2(d) provides that if the Department does not refund amounts due pursuant to a refund claim within ninety (90) days from the date the claim is filed, the Department will be liable for interest on the amount due to the taxpayer.

However, that is not what Taxpayer requested in its refund claim. Taxpayer requested a refund of the base tax and interest incorrectly assessed on catering service charges. The amount of \$8,885 constituted the interest portion of Taxpayer's refund claim, and was calculated by Taxpayer. The Department has already determined that a portion of the tax assessment was made in error, thus Taxpayer is entitled to a refund of the entire amount that was erroneously paid, including associated interest, under IC § 6-8.1-9-2(a). Taxpayer met its burden under IC § 6-8.1-5-1(c) of showing that the original tax assessment was incorrect, and therefore is also entitled to a refund of the interest paid on the erroneous assessment.

FINDING

Taxpayer's protest is sustained.

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